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Plaintiffs' Co-Lead Counsel

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTHERN CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: LENOVO ADWARE LITIGATION

Case No. 5:15-md-02624-HSG

This Document Relates to All Cases

**DECLARATION OF ALEXANDRA P.
SUMMER IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT WITH DEFENDANT
SUPERFISH**

Date: February 23, 2017
Time: 2:00 p.m.
Judge: Haywood S. Gilliam, Jr.
Courtroom: 10, 19th Floor

**DECLARATION OF ALEXANDRA P. SUMMER IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT WITH DEFENDANT
SUPERFISH**

I, Alexandra P. Summer, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am admitted to practice in this Court and the courts of the State of California. I am an attorney with Cotchett, Pitre & McCarthy, LLP, Co-Lead Counsel for Plaintiffs together with Pritzker Levine LLP and Girard Gibbs LLP. The matters described herein are based on my personal knowledge, and if called as a witness, I could and would testify competently thereto. I make this declaration pursuant to 28 U.S.C. § 1746, and in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement with Defendant Superfish, Inc.

2. Attached hereto as **EXHIBIT 1** is the Settlement Agreement between Plaintiffs and Defendant Superfish, Inc. ("Superfish"). This is the first settlement in this action, and the case is ongoing against Defendant Lenovo.

3. The parties have participated in extensive discovery, which remains ongoing. Plaintiffs, Superfish, and Lenovo exchanged initial disclosures early in the litigation, and Plaintiffs and Lenovo have served each other with requests for production of documents, interrogatories, and numerous deposition notices. Documents have been produced by each party, and 11 depositions have been taken to date. Fact discovery is currently scheduled to close in January 2017. In addition to the formal discovery described above, Plaintiffs have also received extensive informal discovery from Superfish pursuant to the terms of the Settlement.

4. Following the disclosure of the truth about VisualDiscovery, Superfish's business prospects and financial condition declined substantially and rapidly: its insurance carrier disputed coverage, and a bankruptcy filing was being considered by the company. In light of these facts, Plaintiffs and Superfish agreed to engage in settlement negotiations early in this litigation. These negotiations included correspondence and in-person meetings, including a mediation session before the retired federal judge, Hon. Edward A. Infante, the exchange of confidential information reflecting the parties' respective views of liability and damages, and detailed information concerning Superfish's poor financial condition, current and future business prospects, and insurance coverage issues. The proposed settlement was only entered into after the exchange of

1 this information, dialogue between the parties, and negotiation concerning appropriate financial
2 consideration to be paid in exchange for a release.

3 5. Superfish has agreed to pay and has deposited into the Escrow Account
4 contemplated by the Settlement Agreement the total sum of \$1,000,000 to settle the claims against
5 it. Superfish also agreed to provide substantial cooperation to Plaintiffs. This cooperation includes
6 producing additional documents and discovery relevant to the litigation, providing assistance to
7 establish the authenticity and admissibility of documents, making knowledgeable persons then-
8 employed by Superfish available for interviews, responding to requests for assistance in
9 understanding the facts at issue, producing at trial in person, by deposition or affidavit,
10 representatives to testify, and assist in seeking certification of the Settlement Class. The
11 cooperation agreed to by Superfish has provided and will continue to provide Plaintiffs with
12 evidence to advance this litigation against Lenovo up to and through trial.

13 6. After Plaintiffs and Superfish executed the Settlement Agreement, the Court granted
14 in part Plaintiffs' Motion for Class Certification with respect to certain claims asserted against
15 Lenovo in the Complaint. The Court certified the following classes and appointed the Plaintiffs
16 identified below as the Class representatives:

17 **Indirect Purchaser Class** (represented by Jessica Bennett, Rhonda Estrella and John
18 Whittle): All persons who purchased one or more Lenovo computer models, on which
19 VisualDiscovery was installed, in the United States from someone other than Lenovo.

20 **California Class** (represented by Jessica Bennett and Rhonda Estrella): All persons
21 who purchased one or more Lenovo computer models, on which VisualDiscovery was
22 installed, in California.

23 The Court also appointed Pritzker Levine LLP, Cotchett, Pitre & McCarthy LLP, and Girard Gibbs
24 LLP as Co-Lead Class Counsel.

25 7. In anticipation of class notice, Class Counsel solicited proposals from five well-
26 established class action settlement administration firms to ascertain the estimated cost of providing
27 notice of the proposed Settlement to the approximately 800,000 members of the Settlement Class.
28 Based on the responses received to date, the cost of a proper notice program is likely to range from

1 approximately \$300,000 to \$400,000, which would consume a large portion of the \$1,000,000
2 Settlement Fund.

3 8. When notice is provided to the Settlement Class, it will be done in a manner that
4 comports with due process. Plaintiffs will provide direct notice to those class members whose
5 email or mail addresses may be reasonably obtained, print publication notice in multiple
6 publications, and online publication on a settlement website and through internet banner
7 advertisements on a variety of websites.

8 9. With the Settlement, Plaintiffs have secured \$1,000,000 for the benefit of the
9 Settlement Class, with the potential for a larger recovery against Lenovo. Class Counsel believes
10 that the Settlement is fair and reasonable and in the best interest of the Class, especially in light of
11 Superfish's financial condition, business prospects, and insurance coverage issues. The
12 cooperation from Superfish will assist Plaintiffs in obtaining further recovery for class members.

13
14 Executed on December 9, 2016 in Burlingame, California.

15
16 /s/ Alexandra P. Summer

ALEXANDRA P. SUMMER